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**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

ELECTRONIC FRONTIER FOUNDATION,

Plaintiff,

v.

OFFICE OF THE DIRECTOR OF NATIONAL
INTELLIGENCE,

Defendant.

Civil Action No. 3:07-5278 (SI)

**DEFENDANT'S ANSWER TO
PLAINTIFF'S COMPLAINT
FOR INJUNCTIVE RELIEF**

1 Defendant, the Office of the Director of National Intelligence, by and through
2 undersigned counsel, hereby answers plaintiff's complaint in the above-captioned matter as
3 follows:

4 First Affirmative Defense

5 Plaintiff's complaint fails to state a claim upon which relief can be granted.

6 Second Affirmative Defense

7 The Court lacks subject matter jurisdiction over plaintiff's complaint because defendant
8 has not improperly withheld information within the meaning of the Freedom of Information Act
9 ("FOIA"), 5 U.S.C. § 552.

10 Third Affirmative Defense

11 The FOIA request that is the subject of this lawsuit may implicate certain information
12 that is protected from disclosure by one or more statutory exemptions. Disclosure of such
13 information is not required or permitted.

14 Fourth Affirmative Defense

15 Defendant denies each and every allegation contained in the complaint except as
16 hereinafter may be expressly admitted.

17 In response to the numbered paragraphs and sentences of the complaint, defendant
18 admits, denies, or otherwise responds as follows:

19 1. The allegations contained in first two sentences of this paragraph consist of
20 plaintiff's characterization of its complaint, to which no response by defendant is required. To
21 the extent a response is deemed required, defendant admits that this action arises under the FOIA
22 and that the Office of the Director of National Intelligence is the named defendant, but denies the
23 remainder of the allegations contained in these sentences. The third and fourth sentences of this
24 paragraph consist of plaintiff's conclusions of law and characterization of the nature of
25 plaintiff's action, to which no response is required. To the extent a response is deemed required,
26 defendant denies the allegations.

27 2. Defendant lacks knowledge sufficient to form a belief as to the truth of the
28 allegations of this paragraph.

1 3. Admitted.

2 4. The allegations contained in this paragraph consist of legal conclusions regarding
3 the scope and extent of the Court's jurisdiction, to which no response from defendant is required.
4 To the extent a response is deemed required, the allegations are denied.

5 5. The allegations contained in this paragraph consist of legal conclusions regarding
6 the venue of this action, to which no response from defendant is required. To the extent a
7 response is deemed required, the allegations are denied.

8 6. The allegations contained in this paragraph consist of legal conclusions regarding
9 the scope and extent of the Court's jurisdiction, to which no response from defendant is required.
10 To the extent a response is deemed required, the allegations are denied.

11 7. The allegations contained in this paragraph constitute plaintiff's characterization
12 of matters contained in published news reports, to which no response by defendant is required.
13 To the extent a response is deemed required, with respect to the allegations contained in the first
14 sentence, this sentence quotes a portion of a December 15, 2005 article in the NEW YORK TIMES,
15 to which the Court is respectfully referred for a full and accurate statement of its contents. With
16 respect to the allegations in the second sentence, defendant admits that, in a radio address made
17 on December 17, 2005, the President of the United States described certain activities of the NSA
18 which he authorized following the terrorist attacks of September 11, 2001. The Court is
19 respectfully referred to the transcript of that radio address, available at
20 <http://www.whitehouse.gov/news/releases/2005/12/20051217.html>, for a full and accurate
21 description of the President's statement.

22 8. The allegations contained in this paragraph constitute plaintiff's characterization
23 of matters contained in published news reports, to which no response by defendant is required.
24 To the extent a response is deemed required, this paragraph quotes a portion of a December 24,
25 2005 article in the NEW YORK TIMES, to which the Court is respectfully referred for a full and
26 accurate statement of its contents.

27 9. The allegations contained in this paragraph constitute plaintiff's characterization
28 of matters contained in published news reports, to which no response by defendant is required.

1 To the extent a response is deemed required, this paragraph quotes a portion of a February 6,
2 2006 article in USA TODAY, to which the Court is respectfully referred for a full and accurate
3 statement of its contents.

4 10. The allegations contained in this paragraph constitute plaintiff's characterization
5 of various lawsuits related to certain activities of the NSA following the terrorist attacks of
6 September 11, 2001, to which no response by defendant is required. To the extent a response is
7 deemed required, defendant admits that various lawsuits have been filed throughout the United
8 States related to certain activities of the NSA, but denies plaintiff's characterization of these
9 lawsuits.

10 11. The allegations contained in this paragraph constitute plaintiff's
11 characterization of the Protect America Act of 2007, to which no response by defendant is
12 required. To the extent a response is deemed required, defendant denies plaintiff's
13 characterization of the Act except to admit that the President of the United States signed the
14 Protect America Act of 2007 into law on August 5, 2007. The Court is respectfully referred to
15 the Act for a full and accurate statement of its contents. *See* Protect America Act of 2007, Pub.
16 L. No. 110-55, 121 Stat. 552.

17 12. The allegations contained in this paragraph constitute plaintiff's characterization
18 of matters contained in published news reports, to which no response by defendant is required.
19 To the extent a response is deemed required, this paragraph quotes a portion of a August 5, 2007
20 article in the NEW YORK TIMES, to which the Court is respectfully referred for a full and accurate
21 statement of its contents.

22 13. The allegations contained in this paragraph constitute plaintiff's characterization
23 of a public statement by the President of the United States concerning the Protect America Act of
24 2007, to which no response by defendant is required. To the extent a response is deemed
25 required, the Court is respectfully referred to the entire statement for a full and accurate
26 statement of its contents. *See*
27 <http://www.whitehouse.gov/news/releases/2007/08/20070805.html>.

28 14. The allegations contained in this paragraph constitute plaintiff's characterization

1 of matters contained in published news reports, to which no response by defendant is required.
2 To the extent a response is deemed required, this paragraph quotes a portion of a August 22,
3 2007 article in the EL PASO TIMES, to which the Court is respectfully referred for a full and
4 accurate statement of its contents.

5 15. The allegations contained in this paragraph constitute plaintiff's characterization
6 of matters contained in published news reports, to which no response by defendant is required.
7 To the extent a response is deemed required, this paragraph quotes a portion of a September 20,
8 2007 article in NEWSWEEK, to which the Court is respectfully referred for a full and accurate
9 statement of its contents.

10 16. Defendant admits that it received two facsimiles from plaintiff on August 31,
11 2007, but defendant otherwise denies plaintiff's characterization and description of the contents
12 of those facsimiles. For a full and accurate statement of the contents of the facsimiles, the Court
13 is respectfully referred to Exhibits K & L of the Declaration of Marcia Hoffman, filed in support
14 of plaintiff's motion for preliminary injunction.

15 17. Admitted.

16 18. Admitted.

17 19. Defendant denies the allegations in this paragraph, except to aver that defendant
18 is continuing to process Plaintiff's FOIA requests and, as explained in the declaration of John F.
19 Hackett, filed in support of defendant's opposition to plaintiff's motion for preliminary
20 injunction, defendant anticipates providing plaintiff with an interim response to the FOIA
21 requests on or before November 30, 2007, and a final response on or before December 31, 2007.

22 20. The allegations contained in this paragraph constitute conclusions of law to which
23 no response by defendant is required. To the extent a response is deemed required, the
24 allegations are denied.

25 21. The allegations contained in this paragraph constitute conclusions of law to which
26 no response by defendant is required. To the extent a response is deemed required, the
27 allegations are denied.

28 22. The allegations contained in this paragraph constitute conclusions of law to which

1 no response by defendant is required. To the extent a response is deemed required, the
2 allegations are denied.

3 23. Defendant repeats and realleges the responses made in paragraphs 1-22.

4 24. The allegations contained in this paragraph constitute conclusions of law to which
5 no response by defendant is required. To the extent a response is deemed required, the
6 allegations are denied.

7 25. The allegations contained in this paragraph constitute conclusions of law to which
8 no response by defendant is required. To the extent a response is deemed required, the
9 allegations are denied.

10 26. The allegations contained in this paragraph constitute conclusions of law to which
11 no response by defendant is required. To the extent a response is deemed required, the
12 allegations are denied.

13 WHEREFORE, having fully answered plaintiff's complaint, defendant prays for a
14 judgment dismissing the complaint with prejudice and for such further relief as the Court may
15 deem just.

16
17 Dated: November 26, 2007

Respectfully submitted,

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Acting Assistant Attorney General

19 CARL J. NICHOLS
Deputy Assistant Attorney General

20 SCOTT N. SCHOOLS
United States Attorney

21 ELIZABETH J. SHAPIRO
22 Assistant Director, Federal Programs Branch
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24 /s/ Andrew I. Warden
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